

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105(11), 455B.173, 455B.186, and 455B.197, the Environmental Protection Commission hereby amends Chapter 60, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 64, “Wastewater Construction and Operation Permits,” and Chapter 66, “Pesticide Application to Waters,” Iowa Administrative Code.

The purpose of this rule making is to allow for the use of a new General Permit (No. 7) to authorize discharge of biological pesticides and chemical pesticides which leave a residue to waters of the United States, as required by U.S. Sixth Circuit Court of Appeals in their decision on January 7, 2009. This decision vacated the U.S. EPA’s final rule exempting pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) from the Clean Water Act (CWA) permitting requirements. The states and EPA have until April 9, 2011, to issue final general NPDES permits for pesticide applications.

Coverage under the draft NPDES Pesticides General Permit No. 7 (PGP) will be required for the application of: (1) biological pesticides whether or not they leave a residue, and (2) chemical pesticides which leave a residue (hereinafter collectively “pesticides”) that result in residue discharges to waters of the United States. Applicable pesticide applications include those for control of aquatic nuisance insects; weeds, algae, and bacteria or fish parasites; aquatic nuisance animals; and forest canopy pests. Irrigation return flows and agricultural runoff are not covered under the PGP as they are specifically exempted from the CWA.

The permit requires all operators to implement Best Management Practices (BMPs) to minimize discharges resulting from pesticide applications. These BMPs include following label instructions, conducting regular equipment maintenance, and visually monitoring application sites when possible. Larger applicators have additional requirements, including the submittal of a Notice of Intent (NOI) for coverage under the permit, the submittal of annual activity reports, and the preparation of pesticide discharge management plans.

Two requirements of Iowa’s General Permit No. 7 may be seen as more stringent than the draft federal pesticides permit EPA put on public notice: (1) the requirement, which is not included in EPA’s permit, to obtain prior approval before applying pesticides to sources of drinking water (Class C waters) and (2) the requirement to notify the Department within 6 hours of a hazardous condition, as opposed to the 24-hour notification requirement in EPA’s permit. The Department has historically required preapproval for pesticide applications to Class C waters based on Iowa Code section 455B.186 and 567—Chapter 66. The 6-hour hazardous condition notification requirement is identical to the requirement in 567—131.2(455B). Because both the prior-approval requirement and the hazardous condition notification requirement are currently present in existing rules, no additional fiscal impact will be placed on citizens or the State.

The amendments to Chapters 60, 64, and 66 that are adopted herein to accompany the PGP found at www.iowadnr.gov/water/npdes/pesticides.html are summarized below.

Chapter 60:

(1) Add the new Notice of Intent, Notice of Termination, and Annual Reporting forms for the new General Permit No. 7.

Chapter 64:

(1) Exempt discharges of biological pesticides and chemical pesticides that do not reach the waters of the United States from the requirement to obtain a DNR operating permit.

(2) Require the issuance of a General Permit No. 7 (the PGP) for specific pesticide discharges that reach waters of the United States.

(3) Exempt pesticide discharges which do not meet the thresholds established in the PGP from the requirement to submit a Notice of Intent.

(4) Establish effective and expiration dates for the PGP.

- (5) Exempt the PGP from the collection of permitting fees.
- (6) Make other changes as needed to accommodate the issuance of the PGP.

Chapter 66:

- (1) Add references to Chapter 64 and the PGP.
- (2) Remove the existing requirements, the denial conditions, and the special conditions for the previous aquatic pesticides general permit. All of these requirements and conditions are included in the PGP.

Notice of Intended Action for these amendments was published in the September 8, 2010, Iowa Administrative Bulletin as **ARC 9056B**. Comments were received during the public comment period and at six public hearings.

The adopted amendments were modified from those published under Notice of Intended Action based on the comments received during the public comment period. The following changes were made to the adopted amendments:

1. The phrase “which leave a residue” in 64.3(1)“f” was removed, and the phrase “water of the state” was changed to “water of the United States” in 66.1(1) for clarification purposes.
2. In Items 1, 3 and 8, form numbers were omitted as they have not been established yet.

The following modifications were made to General Permit No. 7 based on comments received during the public comment period and on changes made to EPA’s draft federal pesticides permit:

1. Changes to the Notice of Intent thresholds were made to: (a) raise the linear mile weed threshold from 60 miles to 75 miles and from 60 acres to 80 acres; (b) raise the mosquito threshold from 1,000 acres to 6,400 acres; (c) raise the forest canopy threshold from 640 acres to 6,400 acres; and (d) raise the nuisance animal threshold from 20 acres to 80 acres to match EPA’s updated draft permit and to ensure that Notices of Intent for coverage under the PGP are received only from the largest pesticide applicators.
2. The forest canopy use category was expanded to include ground application as well as aerial application, and the weed and algae use category was expanded to include fungi to match EPA’s draft permit.
3. In order to simplify the requirement and to match EPA’s latest draft permit, the submittal time for NOIs was changed to when an annual threshold is exceeded, rather than when an operator knows or should have reasonably known they would exceed a threshold.
4. The initial NOI submittal date was extended until October 9, 2011, to match EPA’s draft permit and to allow time for program rollout.
5. The requirement that operators identify the target “species” was changed to a requirement that operators identify the target “pest” to match EPA’s draft permit.
6. The requirement to maintain records for equipment cleaning and repair was removed to match EPA’s draft permit.

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code sections 455B.105(11), 455B.173, 455B.186 and 455B.197.

These amendments shall become effective March 30, 2011.

The following amendments are adopted.

ITEM 1. Adopt the following new paragraphs **60.3(2)“w”** and **“x”**:

- w. Notice of Intent for Coverage Under NPDES General Permit No. 7, “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides.”
- x. Notice of Discontinuation From Coverage Under General Permit No. 7.

ITEM 2. Reletter paragraph **60.3(3)“j”** as **60.3(3)“k.”**

ITEM 3. Adopt the following new paragraph **60.3(3)“j”**:

- j. General Permit No. 7, “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides,” Annual Monitoring Report.

ITEM 4. Adopt the following **new** paragraph **64.3(1)“f”**:

f. Discharges from the application of biological pesticides and chemical pesticides where the discharge does not reach a water of the United States as defined in 40 CFR Part 122.2.

ITEM 5. Adopt the following **new** subparagraph **64.3(4)“b”(7)**:

(7) For the discharge of biological pesticides and chemical pesticides which leave a residue to a water of the United States (as defined in 40 CFR Part 122.2) that meet any of the thresholds established in General Permit No. 7 after March 30, 2011.

ITEM 6. Amend subparagraph **64.3(11)“b”(4)** as follows:

(4) Failure to submit such records and information as the director shall require both generally and as a condition of the ~~operation~~ permit in order to ensure compliance with the discharge conditions specified in the permit.

ITEM 7. Adopt the following **new** subparagraph **64.4(2)“a”(5)**:

(5) Discharges from the application of biological pesticides and chemical pesticides which leave a residue where the discharge will reach a water of the United States as defined in 40 CFR Part 122.2.

ITEM 8. Adopt the following **new** subparagraph **64.6(1)“a”(6)**:

(6) General Permit No. 7, “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides.”

ITEM 9. Amend subparagraphs **64.6(1)“c”(2)** and **(3)** as follows:

(2) General ~~Permit~~ Permits No. 4, No. 5, No. 6, and No. 7. There are no public notification requirements for ~~this permit~~ these permits.

~~(3) General Permit No. 5. There are no public notification requirements for this permit.~~

ITEM 10. Amend paragraph **64.6(3)“c”** as follows:

c. The department finds that water well construction and well service discharge ~~is~~ are not managed in a manner consistent with the conditions specified in General Permit No. 6, ~~or~~

ITEM 11. Adopt the following **new** paragraph **64.6(3)“d”**:

d. The department finds that discharges from biological pesticides and chemical pesticides which leave a residue are not managed in a manner consistent with the conditions specified in General Permit No. 7.

ITEM 12. Amend subrule 64.8(2) as follows:

64.8(2) *Renewal of coverage under a general permit.* Coverage under a general permit will be renewed subject to the terms and conditions in paragraphs “a” to “d.”

a. If a permittee intends to continue an activity covered by a general permit beyond the expiration date of the general permit, the permittee must reapply and submit a complete Notice of Intent ~~as follows:~~ in accordance with 64.6(1).

~~(1) For storm water discharge associated with industrial activity, complete Notice of Intent requirements are listed in 64.6(1).~~

~~(2) Reserved.~~

b. No change.

c. A person holding a general permit is subject to the terms of the permit until it expires or a Notice of Discontinuation is submitted in accordance with 64.6(5). If the person holding a general permit continues the activity beyond the expiration date, the conditions of the expired general permit will remain in effect provided the permittee submits a complete Notice of Intent for coverage under a renewed or reissued general permit within 180 days after the expiration date of the expired general permit. If the person continues an activity for which the general permit has expired and the general permit has not been reissued or renewed, the discharge must be permitted with an individual NPDES permit according to the procedures in 64.3(4) “a.”

d. No change.

ITEM 13. Adopt the following **new** subrule 64.15(7):
64.15(7) “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides,” NPDES General Permit No. 7, effective March 30, 2011, to March 29, 2016.

ITEM 14. Adopt the following **new** subrule 64.16(6):
64.16(6) “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides,” NPDES General Permit No. 7. No fees shall be assessed.

ITEM 15. Amend subrules 66.1(1) and 66.1(2) as follows:
66.1(1) *Prohibited discharges.* ~~Pesticides, including aquatic pesticides,~~ shall not be applied to any water of the state designated in ~~567—subrule 61.3(5)~~ as Class “A,” Class “C,” ~~high quality, or high quality resource~~ United States (as defined in 40 CFR Part 122.2) except as provided in 66.1(2) ~~and 567—Chapter 64.~~

66.1(2) *Allowable applications.* ~~Aquatic pesticides~~ Pesticides may be applied to any water of the state designated in ~~567—subrule 61.3(5)~~ as Class “A,” Class “C,” ~~high quality, or high quality resource~~ provided that the applicator has a valid ~~Category 5—aquatic pest control certification from the department of agriculture and land stewardship pursuant to 21—paragraph 45.22(2)“e,”~~ and has received a permit from the department United States (as defined in 40 CFR Part 122.2) in accordance with ~~these rules: 567—Chapter 64 and NPDES General Permit No. 7, “Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States From the Application of Pesticides.”~~

ITEM 16. Rescind and reserve subrules **66.1(3)** to **66.1(5)**.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/9/11.